

Jowa Security Services, Inc. and Jowa Associates, Inc., Employer-Petitioner and National Union, United Plant Guard Workers of America (UPGWA), Case RM-1186

21 March 1984

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

The National Labor Relations Board, by a three-member panel, has considered the Union's objections to an election held 15 October 1981 and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 26 for and 37 against the Petitioner, with 9 challenged ballots, an insufficient number to affect the results. In addition, there was one void ballot and one vote cast for Security Services Officers Association, which has since withdrawn from this representation proceeding.

The Board has reviewed the record in light of the exceptions and briefs and hereby adopts the Regional Director's findings and recommendations, only to the extent consistent herewith.¹

The facts are straightforward. Out of approximately 314 eligible employees in the unit, a total of 64 valid ballots (26 for the Union) and 9 challenged ballots were cast. The Union's Objection 5 alleged that, because of this low voter turnout, the election did not fairly establish that the Union, which at the time of the election was the certified representative of the employees, had lost its majority support.

The investigation disclosed that, 3 days before the election, official notices of election were posted in several locations at the Employer's facility where employees regularly report to receive their paychecks. The election was conducted on a payday. In addition, 2 days before the election the Union mailed copies of the notice of election to all employees on the *Excelsior* list. Nevertheless, the Regional Director concluded that the employees received inadequate notice of the election, inferred that this was the cause of the low voter turnout,² and recommended setting aside the election.

The election process with all of its attendant safeguards affords the most reliable indication of employee sentiment with respect to union represen-

tation. The often hard-fought contest between the advocates and opponents of unionization culminates in the expression of the employees' desires at the ballot box in an exercise of labor democracy. The results of a Board election therefore constitute the prima facie will of the employees in an appropriate collective-bargaining unit; hence, a substantial burden rests on a party who would vacate the election. We will not set aside this election on the basis of pure speculation.

It is particularly significant that the election at issue in this proceeding was conducted pursuant to a stipulation entered into by the parties. The purpose of a stipulation is to encourage the parties to agree, in advance, to the election and certification procedure. The stipulation in this case encompassed all aspects of the election procedure, including, inter alia, the date, hours, and location of the balloting; the wording of the ballot itself; the employee eligibility date; the scope and composition of the unit; and the posting of notices of election. There is simply no evidence that any party voiced a concern over the posting of election notices. On the contrary, the parties agreed to the standard procedure and the Regional Director approved it. Indeed, the procedure, which was identical to the one used in the election in which the Union was originally certified,³ was scrupulously followed by the Employer. Thus, according to the Employer, election notices were posted for the required period in four locations at its facility: at the Coke machine, in the employees' classroom which is used to distribute paychecks near the uniform supply board, and next to an employee bulletin board. Moreover, there was no evidence presented that in fact any employee did not see the notice of election. The Regional Director reasoned, however, that it would be "pure speculation to assume that all or the great majority of employees who did

¹ In the absence of exceptions, we adopt pro forma the Regional Director's recommendations that Objections 1, 2, 4 and 6 be overruled. We also adopt his recommendation to overrule.

² He reached these conclusions on the basis that the unit employees essentially only went to the Employer's office to pick up their biweekly paychecks, and thus they were not likely to have had the opportunity to see the posted notices until the day of the election.

³ *Jowa Security Services, Case 8-RC-13828 (1977)* (not reported in Board volumes). The election in that case was also characterized by a relatively low voter turnout and the Employer, like the Union here, filed objections alleging inadequacy of the notice posting procedure. Specifically, the Employer claimed that its employees had little, if any, opportunity to view the official notices of election because they reported for work directly to diverse jobsites and rarely visited the Employer's office facility where the notices were posted. As here, the election in that case was conducted pursuant to a Stipulation for Certification Upon Consent Election. In recommending that the objections be overruled, the Regional Director noted that the parties had agreed upon the mechanics of the election and that, despite its intimate knowledge regarding the work locations of its employees, the Employer did not raise the notice issue until after the election. The Regional Director found that in the circumstances the Board had fully discharged its responsibility to establish a fair election procedure which provided eligible employees the greatest opportunity to vote. Finally, the Regional Director observed that "voter indifference is not sufficient to invalidate an otherwise properly conducted election, especially where as here there is no evidence that these individuals were prevented from voting by the conduct of any party to the election. . . ." The Board affirmed the Regional Director's report.

come into the Employer's facility before the polls closed to pick up their checks actually saw the Notice of Election." It would be equally speculative to conclude that they did not.⁴

The Board has never required that employees receive *actual* notice of an impending election. Rather, the standard has always been that reasonable measures must be taken to assure that unit employees are aware of their right to exercise freely their franchise in a Board-conducted election. This is traditionally accomplished through the posting of the official notice of election in conspicuous places prior to the election. There is no requirement, for example, that eligible employees who are off duty during the posting period be individually notified of the election.⁵ See *Rohr Aircraft Corp.*, 136 NLRB 958 (1962). It is sufficient to show that reasonable steps were taken to apprise employees of their election rights.

There is no evidence of any irregularity in the posting of election notices in this case. According-

⁴ Member Dennis does not rely on the Employer's statement concerning where the notices of election were posted, because no verifying evidence was introduced at a hearing.

⁵ This includes employees who are away from the employer's facility for any reason other than work assignments deliberately given by the employer to assure the employees' absence from the location of the election.

ly, other than the naked assertion that the low turnout was a fortiori attributable to inadequate notice, there is no basis for drawing an inference that lack of notice was the reason for the low turnout. Whether employees fail to vote because of hospitalization, vacation, apathy, or any other normal conditions of life, we see no useful purpose in speculating as to the state of mind of employees who do not vote. In the absence of evidence that any employee eligible to vote was denied the right to cast a ballot, the reasons for an employee's failure to vote are irrelevant. *Stiefel Construction Co.*, 65 NLRB 925 (1946). Rather, we prefer to rely on the untainted results of the well-established election machinery as the best evidence of employee sentiment. Accordingly, we overrule Objection 5 and shall certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for National Union, United Plant Guard Workers of America, and that it is not the exclusive representative of these bargaining unit employees.